Nos. 02-241, 02-516

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IN THE

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BARBARA GRUTTER,
Petitioner,
v.
LEE BOLLINGER, *et al.*,
Respondents.

JENNIFER GRATZ AND PATRICK HAMACHER,
Petitioners,
v.
LEE BOLLINGER, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF *AMICUS CURIAE* OF THE NATIONAL EDUCATION ASSOCIATION, *ET AL.*, IN SUPPORT OF RESPONDENTS

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BRIEF *AMICUS CURIAE* OF THE NATIONAL EDUCATION ASSOCIATION, *ET AL.*, IN SUPPORT OF RESPONDENTS

INTEREST OF *AMICI CURIAE*

This brief *amicus curiae* is submitted, with the consent of the parties,[1] on behalf of the National Education Association

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[1] Letters of consent are on file with the Clerk. No counsel for a party authored this brief in whole or in part, and no person or entity other than *amici curiae* made a monetary contribution to the preparation or submission of the brief.

("NEA") and 31 of its affiliated state education associations,[2] People For the American Way Foundation ("People For"), and the American Federation of State, County, and Municipal Employees, AFL-CIO ("AFSCME").

NEA is a nationwide employee organization of more than 2.7 million members, the vast majority of whom are employed by public school districts, colleges, and universities. NEA operates through a network of affiliated organizations at the state and local levels, including the state education associations that have joined in this brief. Founded in 1857 "to promote the cause of popular education in the United States," NEA continues to pursue the objective—as articulated in its mission statement—of "fulfill[ing] the promise of a democratic society" by "promot[ing] the cause of quality public education." This is likewise a basic objective of the *amici* state education associations.

People For is a nonpartisan, education-oriented, citizens' organization established to promote and protect civil and constitutional rights. Founded in 1980 by a group of religious, civic, and educational leaders devoted to our

[2] The state education associations that join in this brief are the California Teachers Association (including specifically the California Faculty Association), Colorado Education Association, Connecticut Education Association, Federal Education Association, Florida Education Association, Georgia Association of Educators, Hawaii State Teachers Association, Idaho Education Association, Illinois Education Association-NEA, Indiana State Teachers Association, Kansas NEA, Maine Education Association, Maryland State Teachers Association, Michigan Education Association, Education Minnesota, Missouri NEA, Nebraska State Education Association, New Jersey Education Association, NEA-New Mexico, NEA-New York, North Carolina Association of Educators, Ohio Education Association, Oregon Education Association, Pennsylvania State Education Association, The South Carolina Education Association, South Dakota Education Association, Texas State Teachers Association, Vermont-NEA, Washington Education Association, Wisconsin Education Association Council, and Wyoming Education Association.

nation's heritage of tolerance, pluralism and liberty, People For now has more than 600,000 members and supporters nationwide. People For continues to seek to combat discrimination and its effects and to promote quality public education, including classroom diversity, through educational programs and participation in important litigation such as these cases.

AFSCME is a nationwide labor organization of some 1.3 million members, who are working men and women employed throughout the United States, Puerto Rico, and Panama. AFSCME is the largest union of public service and health care workers in the country. AFSCME's membership includes approximately 250,000 members who work in education, more than 100,000 of whom are employed by colleges and universities (including some 1,800 members at the University of Michigan). AFSCME is dedicated to fulfilling the promise of American life, including providing "education, protection and family preservation for all its children."

INTRODUCTION

Amici believe that racial diversity in America's classrooms not only helps to overcome our nation's unfortunate legacy of slavery, segregation, and discrimination, but also—and more to the point in the present context—enables education to fulfill its mission of preparing students to function in an increasingly multiracial society. Toward this end, it is essential in our view that educational institutions be allowed some latitude in making decisions that affect the composition of their classrooms—including the right to consider race as a factor in order to achieve racial diversity.

This Court has made it clear that any such use of race is, under the Equal Protection Clause, subject to the test of "strict scrutiny." *See Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 222 (1995). That test is intended to "'smoke

out' illegitimate uses of race by assuring that the legislative body is pursuing a goal important enough to warrant use of a highly suspect tool." *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989) (plurality op.).

It is also clear that racial diversity in the composition of classrooms can be "a goal important enough" to warrant consideration of race in making decisions. Years ago this Court recognized that, "in order to prepare students to live in a pluralistic society," local education authorities could justifiably determine that the racial composition of each of their schools should reflect the racial composition of the community at large. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971). With specific regard to colleges and universities, this Court more recently noted that "a state interest in the promotion of racial diversity has been found sufficiently 'compelling,' at least in the context of higher education, to support the use of racial considerations in furthering that interest." *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 286 (1986) (opinion of O'Connor, J.).

Justice O'Connor relied for the latter assessment on the opinion of Justice Powell in *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), a case involving the use of race in admissions to a university's medical school. Justice Powell explained that the school's interest in attaining a "diverse student body" was one of "paramount" importance for fulfilling the school's educational mission. *Id.* at 311, 313. Because "a great deal of learning occurs informally . . . through interactions among students" of different races, religions, sexes, backgrounds, experiences, and interests, *Id.* at 312 n.48, Justice Powell reasoned that the school had a substantial and compelling interest in "select[ing] those students who [in its judgment] will contribute the most to the 'robust exchange of ideas'" central to its educational mission. *Id.* at 312-13. He further noted that the school's interest in doing so also promoted the national interest by ensuring that

future "leaders [are] trained through wide exposure to the ideas and mores of students as diverse as this Nation of many peoples." *Id.* at 313 (quotations omitted).

Justice Powell's observations in Bakke as to the value of racial diversity in higher education are not only rooted in common logic, but are in addition supported by a substantial body of empirical evidence. Much of that evidence has been made part of the record in these cases, and additional studies will be cited in the briefs of respondents and other supporting *amici*. Although the instant brief is devoted to a review of empirical research, it is not our intent to duplicate the presentations of others. We will rather focus on empirical evidence of a somewhat different nature.

Although the specific issue now before this Court is the permissibility of considering race in making student admissions decisions in higher education, federal courts of appeals have in a number of recent cases considered whether and under what circumstances race can be taken into account in making similar decisions in public elementary/secondary education. *See, e.g., Wessmann v. Gittens*, 160 F.3d 790 (1st Cir. 1998) (admissions to high school); *Tuttle v. Arlington County School Bd.*, 195 F.3d 698 (4th Cir. 1999) (admissions to kindergarten program); *Ho v. San Francisco Unified School Dist.*, 147 F.3d 854 (9th Cir. 1998) (school assignment and transfer decisions); *Eisenberg v. Montgomery County Public Schools*, 197 F.3d 123 (4th Cir. 1999) (applications to transfer among elementary schools).

What this Court has to say about the permissibility of using race as a factor in the cases now before it undoubtedly will affect the ability of public elementary/secondary schools to consider race in making student admissions and assignment decisions as well. Because of this broader ramification, we think it is important for this Court to be aware of the substantial body of empirical evidence indicating that racially diverse classrooms produce significant societal and

educational benefits in elementary/secondary education. It is the purpose of this brief to present some of that evidence—and to demonstrate that what Justice Powell observed with respect to the value of racially diverse classrooms in higher education is equally applicable, if not more so, at the elementary/secondary level.[3]

SUMMARY OF ARGUMENT

A. Ours is not a color-blind society, and race still matters. When it comes to public elementary/secondary education, racial classifications continue to carry great weight—dividing educational opportunities inequitably and distorting perceptions with stereotypes and prejudice. In this context, the mission of public elementary/secondary education—to instill in all children "the values on which our society rests," *Ambach v. Norwick*, 441 U.S.68, 76 (1979), and provide them with the skills and knowledge necessary to

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[3] As indicated in text, we focus in this brief on public elementary/secondary education, and even in that context only on the first prong of the strict scrutiny test—*i.e.*, the value of racially diverse classrooms—as opposed to the "narrow tailoring" prong. Nonetheless, we feel compelled to say a word in response to the reliance of certain of petitioners' supporting *amici*, including notably the United States, on so-called "percentage plans"—which guarantee admission to a fixed percentage of graduating seniors from each high school in the state—as evidence that allegedly race-neutral alternatives exist through which respondents could ensure racially diverse classrooms. Quite apart from the practical problem of how such programs could be applied by institutions—whether kindergartens or law schools—that do not draw their students from a particular universe of feeder schools, such percentage plans at the higher education level depend entirely on the existence of segregated high schools, which in turn is bottomed on continued residential segregation. Indeed, because of the incentives these plans are likely to create, they may well work to perpetuate the existence of segregation in the public schools. It goes without saying that institutions of higher education should not be required, in order to achieve racial diversity, to use means that rely on and perpetuate segregation in the elementary/secondary schools.

realize their full potential, *Wisconsin v. Yoder*, 406 U.S. 205, 239 (1972)—cannot adequately be fulfilled without racially diverse classrooms. Accordingly, achieving such diversity unquestionably serves a compelling state interest.

B. The societal and educational benefits of racially diverse classrooms in public elementary/secondary education are well documented.

1. Classroom contact among students of different races reduces stereotypes and prejudice, and has been found to be more effective in promoting tolerance and cross-racial understanding than any other pedagogical method—including a multicultural curriculum.

2. Racially diverse classrooms offer enduring benefits to a multiracial, democratic society and its citizens. Students who learn to interact with students of other races in school are far more likely to function in integrated environments and promote cross-racial understanding in later life than are students who do not have such interactions.

3. Classroom interactions among students of different races—with different vantage points, skills, and values—is of great consequence not only to the students' development as citizens in a multiracial democratic society, but also to their intellectual development as individuals. The impact of encountering and dealing with racial diversity as part of their education is positively linked to growth in intellectual and academic skills of all students, not only in school but in subsequent years as well. With regard to racial minority students themselves, racially diverse classrooms produce tangible and lasting improvements in academic achievement.

ARGUMENT

RACIALLY DIVERSE CLASSROOMS PRODUCE SIGNIFICANT SOCIETAL AND EDUCATIONAL BENEFITS IN PUBLIC ELEMENTARY/ SECONDARY EDUCATION

As this Court repeatedly has recognized, public elementary/secondary education is designed to achieve two interrelated purposes of paramount importance in our society—instilling in all children "the values on which our society rests," *Ambach v. Norwick*, 441 U.S. 68, 76 (1979), and providing them with the skills and knowledge necessary to realize their full potential by "expand[ing] their knowledge, broaden[ing] their sensibilities, kindl[ing] their imagination, foster[ing] a spirit of free inquiry, and increas[ing] their human understanding and tolerance." *Wisconsin v. Yoder*, 406 U.S. 205, 239 (1972). A substantial body of empirical evidence indicates that racially diverse classrooms contribute significantly to the achievement of both of these purposes: such classrooms teach children to judge others as individuals, rather than according to stereotypes and prejudices; and learning in a racially diverse setting furthers students' cognitive and intellectual development—thus providing an important educational benefit to all students, of every race. We present some of this evidence in Section B below. In order to provide a context in which to judge the importance of the benefits produced by racially diverse classrooms, however, we first show—in Section A—the extent to which educational opportunities continue to be inequitably apportioned by race.

A. The Inequitable Apportionment of Educational Opportunities by Race

We doubt that there is anyone connected with these cases—on either side—who does not share the goal of attaining a society in which, in the words of Martin Luther

King, Jr., our children "will not be judged by the color of their skin, but by the content of their character." Notwithstanding intimations to the contrary in the briefs of petitioners and some of their supporting *amici*, we still have a long way to go to realize Dr. King's dream. Racial classifications continue to carry great weight in our country, dividing educational opportunities inequitably and distorting perceptions with stereotypes and prejudice.

A comparison of the educational opportunities available to black and white college-bound high school students during the mid-1990's—the most recent years for which comprehensive data are available, and years in which petitioners Jennifer Gratz and Patrick Hamacher were in high school—illustrates the point. Black college-bound high school students who graduated in 1996 received significantly less academic instruction then white college-bound high school students over the course of their high school careers: only 39% of black college-bound students received instruction in 19 or more year-long academic courses, as compared to 58% of white college-bound students, and black students were significantly less likely, in the academic courses they did receive, to have been enrolled in honors-level courses. Black students also were significantly less likely than white students to attend a school that offered a gifted and talented program: in the 1993-94 school year 40% of predominantly black public schools offered no such program, as compared to 29.2% of predominantly white schools. Even in schools where gifted and talented programs were offered, blacks were less likely to be enrolled in those programs: in that same school year 8.3% of students in predominantly black schools were enrolled in such programs as compared to 9.5% of students in predominantly white schools. Black students also were much more likely than white students to have been taught by a substitute rather than a full-time certificated teacher for an extended period of time: predominantly black schools used such substitutes to fill

long-term staffing needs 31.2% of the time, as compared to predominantly white schools which used substitutes for that purpose only 5.5% of the time. And, blacks were significantly less likely than whites to attend a regular academic high school as opposed to a vocational/technical or alternative school: 17.5% of predominantly black schools in the 1993-94 school year were vocational/technical or alternative schools as compared to less than 5% of predominantly white schools.[4]

Moving beyond the pool of college-bound high school students, the picture of racial inequities only worsens. Black students were far more likely than white students to drop out of high school (in 1990, 78.7% of black students completed high school as compared to 90.5% of white students); far less likely to pursue any higher education (in 1994, 47.3% of black students who had been enrolled in eighth grade six years earlier had pursued no postsecondary education, whereas only 34% of white students fell into that category); and far less likely if they pursued higher education to enroll in a four-year Bachelor's degree program as opposed to a two-year Associate degree program or an occupational certification program (in 1994, only 23.7% of black students who had been enrolled in eighth grade six years earlier were enrolled in a Bachelor's degree program, as compared to 33.7% of white students in that category).[5]

Even black students who receive the same tangible educational opportunities as white students may, due to their race, still have educational experiences that are qualitatively

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[4] Frederick D. Patterson Research Institute of the United Negro College Fund (hereinafter UNCF), *The African-American Education Data Book, Volume II: Preschool through High School Education* 63, 69, 73, 82 (1997); UNCF, *The African-American Education Data Book, Volume III: The Transition from School to College and School to Work* 13 (1997).

[5] UNCF, *Volume III*, at 118.

different than those of white students. People—even children—have been found to react to individuals differently based on whether they perceive them to be black or white. For example, a 1995 study found that children, when asked to read a list of names and decide whether the named individuals were politicians or criminals, were more likely to decide that African-American sounding names were the names of criminals.[6] Similarly, a 1989 study found that children when confronted with an ambiguous pattern of behavior "were significantly more likely to interpret the ambiguous behavior as aggressive or hostile" when they were told that the behavior was exhibited by an African-American.[7]

In sum, ours is not a color-blind society, and race still matters. When it comes to public elementary/secondary education, minority and nonminority students of equal ability do not, in the aggregate, have equal opportunities. In light of this inescapable fact, the mission of public elementary/secondary education cannot be fulfilled without affirmative efforts to achieve racially diverse classrooms. Such racial diversity in the classroom, as we now show, contributes significantly to the fulfillment of the public schools' educational mission.[8]

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[6] Connie T. Wolfe & Steven J. Spencer, *Stereotypes and Prejudice: Their Overt and Subtle Influence in the Classroom*, 40 Am. Behav. Scientist 176, 178 (Nov./Dec. 1996).

[7] *Id.* The research discussed in text—which focuses on the educational opportunities and experiences of black, as opposed to white, students—is illustrative only. Although the research is more extensive with regard to black students, there is ample evidence to indicate that students from other racial minority groups experience similar problems.

[8] Our use of the term "racially diverse classrooms"—as opposed to such alternative terms as racially diverse student bodies or racially integrated schools—is not without purpose. At the elementary/secondary school level, merely placing minority and nonminority students in the same school does not in itself necessarily create the conditions for

B. The Societal and Educational Benefits of Racially Diverse Classrooms

1. The theory that interracial contact reduces racial stereotypes and prejudice was first articulated by Gordon W. Allport in his seminal work, *The Nature of Prejudice*. Allport posited that racial isolation breeds stereotypes and prejudice, and that "equal status contact between majority and minority groups in the pursuit of common goals" is a critical ingredient in improving relations between members of those groups, especially if such contact "is of a sort that leads to the perception of common interests and common humanity between the members of the two groups."[9]

Subsequent empirical research has repeatedly and consistently confirmed the common-sense understanding that interracial contact can combat stereotypes and prejudice, and

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beneficial interactions among students of different races. Integrated schools often are resegregated, within classrooms due to tracking or ability grouping, and outside classrooms due to students' own choices. A study of voluntary student interactions in a prestigious middle school illustrates what may occur. In the school, no tracking was employed in the seventh grade, and classes were racially mixed. In the eighth grade, however, tracking based on standardized test scores was used, resulting in one group of classes composed of approximately 80% white students and another group of classes composed predominantly of black students. Voluntary peer interactions were studied by observing where students chose to sit in the school cafeteria. Over a five-month period, the number of seventh-grade students who sat next to, or across from, students of another race tripled. Over that same period of time, the number of eighth-grade students who sat next to, or across from, students of another race declined. The different racial preferences of seventh-grade and eighth-grade students illustrates how even integrated elementary/secondary schools can—in the absence of racially diverse classrooms—reinforce rather than lessen racial divisions. Janet W. Schofield & H. Andrew Sagar, *Peer Interaction Patterns in an Integrated Middle School*, 40 Sociometry 130, 135-37 (1977). *See also infra* note 13.

[9] Gordon W. Allport, *The Nature of Prejudice* 281 (1954).

make individuals more comfortable relating to members of other racial groups.[10] This research makes plain, however, that the conditions of contact are critical to its impact. In the first place, contact that occurs during key periods of personal development—for example, in a student's formative years—and that frequently recurs, is far more effective at promoting tolerance and cross-racial understanding than intermittent contact among persons whose social beliefs and identities are fully formed.[11]

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[10] *See* Christopher Ellison & Daniel A. Powers, *The Contact Hypothesis and Racial Attitudes Among Black Americans*, 75 Soc. Sci. Q. 385, 386, 395 (June 1994) (reviewing "considerable evidence [amassed over past four decades] that contact has salutary effects" and reporting, based on survey of 2,107 adults that blacks with close white friends had much "more favorable views of whites and race relations than those who lack such friends") (citing studies); Lee Sigelman & Susan Welch, *The Contact Hypothesis Revisited: Black-White Interaction and Positive Racial Attitudes*, 71 Soc. Forces 781, 788, 790 (Mar. 1993) (reporting, based on survey of 1,546 adults, that blacks with at least one white friend believed whites to be less hostile than blacks with no white friends and that whites "who live in less racially integrated areas also perceive blacks as somewhat more hostile"); Mary R. Jackman & Marie Crane, *'Some of my best friends are black . . .': Interracial Friendship and Whites' Racial Attitudes*, 50 Pub. Opinion Q. 459, 470 (1986) (reporting that "[t]he tendency [among whites] to prefer whites over blacks in basic feelings of warmth and closeness and in personal social predispositions in the workplace and neighborhood does decline quite markedly, . . . among whites who have both friends and acquaintances who are black").

[11] Such crucial stages of development include not only the college years (of those individuals who advance to that educational level) but, more broadly, children's very earliest educational experiences. Because "[t]he early school years are crucial for the formation of the child's own racial identity as well as an understanding of prejudice and fairness," Susanne E. Dutton, Jefferson A. Singer & Ann Sloan Devlin, *Racial Identity of Children in Integrated, Predominantly White, and Black Schools*, 138 J. of Soc. Psychol. 41, 42 (1998), interracial contact in early education has been linked to increased racial tolerance and increased interactions with individuals of other races over the course of one's

So too, contact with a number of different people of another race is more effective in breaking down racist attitudes than contact with just a few individuals of another race, because it forces people to "decategorize" those with whom they are dealing and to treat them as individuals rather than simply as members of a particular racial group.[12] This finding highlights the importance of respondents' recognition that, in the educational context, meaningful racial diversity requires a "critical mass" of minority students if it is to attain its goals.

Finally, contact must be among individuals of equal status, lest contact serve simply to reinforce rather than reduce racist attitudes and prejudices.[13]

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lifetime. *See* Richard R. Scott & James M. McPartland, *Desegregation as National Policy: Correlates of Racial Attitudes*, 19 Am. Educ. Res. J. 397, 399 (Fall 1982). *See also* Ellison & Powers, *supra*, at 392.

[12] Marilynn B. Brewer & Norman Miller, *Contact and Cooperation: When Do They Work?*, *in* ELIMINATING RACISM: PROFILES IN CONTROVERSY 315, 318-20 (Phyllis A. Katz & Dalmas A. Taylor eds., 1988) (explaining that process of decategorization works when frequent interactions with individuals of another group eliminate the "meaning and utility" of treating those individuals primarily as members of another group). *See also* Thomas F. Pettigrew, *The Intergroup Contact Hypothesis Reconsidered in Contact and Conflict*, *in* INTERGROUP ENCOUNTERS 169 (Miles Hewstone & Rupert Brown eds., 1986) (discussing benefits of repeated cross-racial interactions to breaking down stereotypes); Jackman & Crane, *supra*, at 468-71 (finding that whites who had both black acquaintances and friends displayed markedly less racist attitudes than whites with only a single black acquaintance or friend).

[13] Thus, for example, the mere fact that a school is integrated, standing alone, does not ensure improved cross-racial relations among students. Rather, the nature and number of interracial interactions in which students engage are the determinative factors. *See, e.g.*, Charles S. Bullock III, *Contact Theory and Racial Tolerance among High School Students*, 86 School Rev. 187, 201, 206, 210 (Feb. 1978) (reporting, based on survey of 5,800 southern high school students, that white students' tolerance of black students increased with their number of black friends, number of

Given these findings, it is not surprising that interracial cooperative contact among students of different races in our public schools—our "most powerful agency for promoting cohesion among a heterogeneous democratic people," *McCollum v. Board of Education*, 333 U.S. 203, 216 (1948)—has repeatedly been linked with increased levels of tolerance for children of other races,[14] and increased likelihood, "approach[ing] . . . that [which] would have been anticipated in a truly color-blind society," that children of

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contacts with black students in school, and number of contacts with black students outside of school); Janet Schofield, *Black and White In School: Trust, Tension, or Tolerance?* 157, 176-81 (1981) (reporting that desegregation alone generated "a definite, but relatively modest, improvement in relations between black and white students" but that cooperative activities among black and white students generated more significant improvements). *Cf. supra* note 8.

[14] For example, a 1998 study reports that white fourth graders in a predominantly white school were less likely than white fourth graders in integrated schools to choose a picture of a black child as someone with whom they wanted to be friends, and were more likely than the white students in the integrated schools to choose the picture of the black child as representing the child—among an array of pictures of children—that they disliked most. Dutton, *supra*, at 48. A similar racial aversion was found among black fourth graders in a predominantly black school, who more often picked the picture of the white child as the child they disliked most than did black fourth graders in integrated schools. *Id.* *See also* Sandra Koslin *et al.*, *Classroom Racial Balance and Students' Interracial Attitudes*, 45 Soc. Educ. 386, 405 (Fall 1972) (reporting a "clear[] relat[ion]" between classroom racial balance and the racial attitudes of third graders as evidenced "by lower levels of racial tension and less racial polarization" in the racially balanced classrooms than the unbalanced classrooms); Carole G. Goldstein, Elizabeth J. Koopman & Harold H. Goldstein, *Racial Attitudes in Young Children as a Function of Interracial Contact in the Public Schools*, 49 Am. Orthopsychiatric Ass'n 89, 94 (Jan. 1979) (reporting that "[w]hite children in interracial classrooms displayed a significant shift toward increased acceptance of blacks").

different races will become and remain friends.[15] Such one-on-one contact has been found to be more effective in promoting racial tolerance and cross-race interaction than any other pedagogical method—including a multicultural curriculum.[16] Moreover such contact has been linked to the

[15] Robert E. Slavin, *Effects of Biracial Learning Teams on Cross-Racial Friendships*, 71 J. Educ. Psychol. 381, 386 (1979). *See also* Brewer, *supra*, at 320 (reviewing "extensive literature documenting the positive effects of cooperative learning on improved interethnic acceptance within desegregated classrooms"); Robert E. Slavin, *Cooperative Learning: Applying Contact Theory in Desegregated Schools*, 41 J. Soc. Issues 45, 53, 59 (1985) (hereinafter Slavin II) (concluding, based on review of nineteen studies, "that when students work in ethnically mixed cooperative learning groups, they gain in cross-ethnic friendships"); David W. Johnson & Roger T. Johnson, *Effects of Cooperative, Competitive and Individualistic Learning Experiences on Cross-Ethnic Interaction and Friendships*, 118 J. Psychol. 47, 54 (1982) (reporting, based on five-month study of 4th graders, that cooperative learning in racially diverse classrooms "result[ed] in greater cross-ethnic liking that lasts for months" and resulted "in more frequent spontaneous cross-ethnic interaction" during free time); Elliot Aronson & Diane Bridgeman, *Jigsaw Groups and the Desegregated Classroom: In Pursuit of Common Goals*, 5 Personality & Soc. Psychol. Bull. 438, 441 (1979) (reporting that cooperative learning in racially diverse classrooms resulted in "significant increases in [the participating children's] liking for their groupmates both within and across ethnic boundaries").

[16] *See* William J. Genova & Herbert J. Walberg, *A Practioners' Guide for Achieving Student Integration in City High Schools* 30, 32 (1980) (finding, based on survey of 1,484 high school juniors in eighteen different schools, that "opportunities . . . to get to know students from other racial and ethnic groups" were more strongly correlated to students' willingness to interact with individuals of other races than the students' exposure to a multicultural curriculum); Yehuda Amir, *The Role of Intergroup Contact in Change of Prejudice and Ethnic Relations*, *in* TOWARDS THE ELIMINATION OF RACISM 240, 260, 266, 281 (Phyllis A. Katz ed., 1976) (reporting that direct interpersonal contact with blacks was more effective in changing white ethnic attitudes than participating in an educational program designed to raise awareness of black issues, and that a multicultural curriculum, standing alone, did little to improve the attitude of white students toward blacks).

formation of "close, reciprocated [interracial] friendship choices, the kind of friendships that should be [the] most difficult to change,"[17] and which social scientists have long viewed "as one of most potent agents for ethnic change."[18]

As the foregoing review of empirical research suggests, cooperative interracial contact reduces racial stereotypes and prejudice by teaching students that individuals hold a multitude of different viewpoints, experiences and attitudes, which cannot be meaningfully captured by reducing individuals to racial categories. By providing students the opportunity to individualize others with whom they interact, schools also provide students with the opportunity to identify the concerns they share in common with students of other races.

In the end, this process—far from resulting in the racial balkanization that petitioners and their supporting *amici* evoke—leads to precisely the opposite result. As one researcher explained, cooperative interaction between different groups "induces members [of different groups] to conceive of themselves as one (superordinate) group rather than as two separate groups, thereby transforming their categorized representations from *us* and *them* to a more inclusive *we*."[19]

2. These consequences of classroom diversity offer enduring benefits to a multiethnic, democratic society and its

[17] Slavin II, *supra*, at 55, 59.

[18] Amir, *supra*, at 272.

[19] Samuel L. Gaertner et al., *How does Cooperation Reduce Intergroup Bias?*, 59 J. Personality & Soc. Psychol. 692, 693 (1990). *See also* Samuel L. Gaertner et al., *The Contact Hypothesis: The Role of a Common Ingroup Identity on Reducing Intergroup Bias*, 25 Small Group Res. 224, 242 (May 1994) (reporting that study of students' interracial interactions "support[ed] the idea that [Allport's] Conditions of Contact reduce bias *in part* because they transform students' cognitive representations from 'us' and 'them' to a more inclusive 'we'").

citizens. Students who learn to interact with individuals of other races in elementary/secondary school are far "more likely to function in desegregated environments in later life. As adults, they more frequently live[] in desegregated neighborhoods, ha[ve] children who attend[] desegregated schools, and ha[ve] close friends of the other race[s] than did adults . . . who had attended segregated schools."[20] They are also more likely as adults to interact with individuals of other races than are students educated in racially homogeneous schools.[21]

Two recent studies of high school students in Louisville, Kentucky, and Cambridge, Massachusetts support these conclusions. These studies demonstrate that racially diverse schools and classrooms produce students who have very high levels of comfort in dealing and working with individuals of

[20] Jomills Henry Braddock II & James M. McPartland, *Social-Psychological Processes that Perpetuate Racial Segregation*, 19 J. Black Studies 267, 269 (1989) (discussing results of desegregation at the elementary and secondary school level based on national survey of 12,686 individuals). *See also* Amy Stuart Wells & Robert L. Crain, *Perpetuation Theory and the Long-Term Effects of School Desegregation*, 64 Rev. Educ. Res. 531, 552 (Winter 1994) (concluding based on extensive review of the social science literature that "desegregated black [elementary and secondary school] students are more likely to have desegregated social and professional networks in later life"); William T. Trent, *Outcomes of School Desegregation: Findings from Longitudinal Research*, 66 J. Negro Educ. 255, 256 (1997) (finding that increased school racial diversity "has a strong, statistically significant, and positive effect on the likelihood that Blacks will have White coworkers and that Whites will have Black coworkers").

[21] *See, e.g.*, Lee Sigelman et al., *Making Contact? Black-White Social Interaction in an Urban Setting*, 101 Am. J. Soc. 1306, 1322 (Mar. 1996); Peter B. Wood & Nancy Sonleitner, *The Effect of Childhood Interracial Contact on Adult Antiblack Prejudice*, 20 Int'l J. Intercultural Rel. 1 (1990). *See also supra* note 20.

other races in later life—which they attribute in large part to their school experiences.[22]

These conclusions about the long-term benefits of racially diverse classrooms in public elementary/secondary schools are confirmed by the expert report of Professor Patricia Gurin that was submitted to—and unrebutted in—the trial court in these cases. Gurin found that "[w]hite students who attended colleges with 25% or more minority enrollment . . . were much more likely [than white students who attended colleges with very low minority enrollment] to have diverse friendships after leaving college and to live in diverse neighborhoods and work in settings where coworkers were diverse," and that the same general pattern held for black

[22] *See* The Civil Rights Project-Harvard University, *The Impact of Racial and Ethnic Diversity on Educational Outcomes: Cambridge, MA School District* 4, 6, 7 (Jan. 2002) (hereinafter *MA Survey*)(reporting, based on survey of 379 high school seniors in racially diverse school, that 90% of black students and 99% of white students said they were "comfortable" or "very comfortable" working with students of other races, that 94% of both black and white students felt prepared to work with individuals of other races after high school, and that 73% of black students and 82% of white students believed their school experiences had "helped a lot" or "somewhat" in teaching them to work with individuals of other races); Michal Kurlaender & John T. Yun, *Is Diversity a Compelling Educational Interest?*, *in* DIVERSITY CHALLENGED: EVIDENCE ON THE IMPACT OF AFFIRMATIVE ACTION 111, 124-25, 130 (Gary Orfield ed., 2001) (hereinafter *KY Survey*) (reporting, based on survey of 1,164 high school juniors in Louisville, Kentucky, that 94.9% of black students and 92.6% of white students reported being "comfortable" or "very comfortable working with students of other races and that over 80% of both black and white students believed their school experience had helped them "a lot" or "somewhat" in working effectively with individuals of other races both in school and in the future). *See also* Marvin P. Dawkins & Jomills Henry Braddock II, *The Continuing Significance of Desegregation: School Racial Composition and African American Inclusion in American Society*, 63 J. Negro Educ. 394, 403 (1994).

students based on the extent of their informal interactions in college with students of other races.[23]

As the foregoing studies explain, racially diverse classrooms produce these long-range benefits because they break the cycle of segregation in neighborhoods, schools, social networks and occupations. Equally to the point, they demonstrate that by closing the door on racial diversity in the schools, we open the door to further racial prejudice and discrimination by perpetuating the racial isolation that breeds such prejudice and discrimination.

3. Teaching elementary/secondary school students to individualize the persons with whom they are dealing and identify common ground is of great consequence not only to the students' development as citizens in our democratic society, but also to their intellectual development as individuals.

(a) Social scientists have reported that heterogeneous groups—including groups that differ only with respect to the race of the participants—are better at creative problem-solving than homogeneous groups, due to the benefits of interactions between individuals with different vantage points, skills, or values.[24] Reflecting that reality,

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[23] Expert Report of Patricia Gurin submitted in *Gratz v. Bollinger*, No. 97-75321 (E.D. Mich.), and *Grutter v. Bollinger*, No. 97-75928 (E.D. Mich.) (hereinafter Gurin Report), *Empirical Results from the Analyses Conducted for this Litigation* (available at http://www.umich.edu/~urel/admissions/legal/ expert/empir.html at 2, 7-8) (hereinafter *Empirical Results*) (describing findings based on three separate surveys of college students, a national survey of 9,316 students at 184 different four year colleges and two separate surveys of University of Michigan undergraduates).

[24] *See* Poppy Lauretta McLeod, Sharon Alisa Lobel & Taylor H. Cox, Jr., *Ethnic Diversity and Creativity in Small Groups*, 27 Small Group Res. 248, 250 (May 1996) (summarizing "consistent empirical support" for the conclusion that heterogeneous groups—including groups that are diverse

high school students who are asked whether or not racial and ethnic diversity has enhanced their educational experience respond in the affirmative in overwhelming numbers.[25] Indeed, some even contend that greater classroom diversity would further improve the educational process.[26]

Other research provides further evidence of the cognitive benefits of interracial interactions in the educational context. For example, in one study, 250 high school students were asked to view a short film showing two boys (one black and one white) engaged in various activities—some positive, some negative and some ambiguous—both together and apart. The students were asked to describe what the boys had done in the film and predict what each would do in various

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only as to race or gender—generate more creative and feasible solutions to problems than do homogeneous groups).

[25] Recent surveys of public high school students in Louisville, Kentucky and Cambridge, Massachusetts, found that over 80% of students believed that their experiences in racially and ethnically diverse high schools "ha[d] helped them to work more effectively with and to get along with members of other races and ethnic groups." *KY Survey, supra*, at 132; *MA Survey, supra,* at 7. Students also gave strong responses to open-ended questions regarding the value of racial and ethnic diversity in the school, affirming once more the value to them of attending a racially and ethnically diverse school. *See MA Survey*, at 6 (student reporting that he had "learned a lot about how to deal with people who are different, respect them and be interested in their culture and heritage and learn from them. Living and working with people from different race and ethnic group[s] has become ordinary to me—it is not a big deal, and I think this will help me look beyond our differences and work and learn with them, throughout my life.").

[26] One white high school student voiced his view that "the AP classes would be much better with a more diverse group of students." *MA Survey, supra*, at 10. A black student made a similar point, voicing his discomfort as the only black student in his AP history class because "[w]hen we have discussions about the black community, I get offended and intimidated." *Id.*

specified situations. White students who had had the opportunity for more interracial classroom contact

> (1) described [the boys] in ways that were more differentiated, more integrated, and more multivalent; (2) made prediction of the future behavior of [the boys] that were less absolute; (3) inferred the presence of attributes in [the boys] with less certainty; and (4) were less likely to perceive [the black boy] as submissive and [the white boy] as domin[a]nt.[27]

The white students' greater ability to describe the film participants in meaningful, individualized ways applied not only to their description of the black boy but to their description of the white boy as well, "suggest[ing] that interracial contact had a facilitating effect on the development of interpersonal cognitive skills in general."[28]

Professor Gurin's study of college students once again buttresses the conclusions reached with regard to elementary/secondary education. As Professor Gurin posits, students engage more actively in the intellectual process when confronted with new situations with which they have no experience and for which, by definition, they have no set "script."[29] Gurin's report establishes that many University of Michigan students face just that situation when they arrive at college without any significant experience in dealing with individuals of other races.[30] The impact of encountering and

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[27] Bert Meltzer, *The Influence of the Duration of Interracial Classroom Contact on the Development of Interpersonal Cognitive Skills* 133-34 (Doctoral Dissertation, Clark University) (Ann Arbor, Mich., University Microfilms 1969, No. 69-20, 406).

[28] *Id.* at 133.

[29] Gurin Report, *Summary and Conclusions* (available at http://www.umich.edu/~urel/admissions/legal/expert/summ.html at 1).

[30] Gurin Report, *Appendix E* (available at http://www.umich.edu/~urel/admissions/legal/expert/gurinape.html at 2) (reporting that 83% of University of Michigan's white students graduated from predominantly white high-schools and that 40% of University of Michigan's black students graduated from predominantly black high-schools).

dealing with racial diversity as part of their higher education is positively linked to improved cognitive outcomes for these students—not just in college but subsequently. Specifically, Gurin reports that "[s]tudents who had experienced the most diversity in classroom settings and in informal interactions with peers showed the greatest engagement in active thinking processes . . . and growth in intellectual and academic skills," not only in school but for several years thereafter.[31]

It is important to note that Gurin's measures of active thinking processes and skills were broadly based, reflecting general educational benefits from interracial interaction—rather than merely benefits specific to the ability to discuss racial issues. Thus, for example, Gurin considered whether students' assessments of their progress over the course of college in developing core intellectual skills, such as the ability to think critically and engage in analytical problem-solving, were linked to the extent to which they had engaged in interracial interactions at school. Based on extensive data, Gurin concluded that those two factors were positively linked for white students.[32] Gurin also found that the extent to which white students engaged in informal interracial interactions in school was positively linked to their future intellectual development, as evidenced by the fact that white students who participated in relatively more such interactions

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[31] Gurin Report, *Empirical Results* at 3-4. Gurin's conclusion on this point is based on the three separate surveys described *supra* note 23.

[32] *See* Gurin Report, *Tables C1 & M1* (available at http://www.umich.edu/~urel/admissions/legal/expert/tablec1.html & tablem1.html). Gurin found similar, albeit more modest, linkages for black students as well. *See* Gurin Report, *Tables C2 & M2* (available at http://www.umich.edu/~urel/admissions/ legal/ expert/tablec2.html & tablem2.html).

placed a higher value on critical thinking and problem-solving skills nine years after college then did students who participated in fewer such interactions.[33]

(b) Further support for the proposition that integration itself yields educational benefits is found in the voluminous social science literature analyzing the impact of school desegregation on student performance. Although the results of studies in this area have been mixed, once one accounts for methodological differences a broad consensus emerges that school desegregation has resulted in tangible and lasting improvements in black student academic achievement. As one of the definitive reviews of the literature concludes, desegregation has been positively linked to increases in black student achievement levels, generating gains on average of .3 of a grade year in student performance at the elementary and secondary school level and gains of on average .57 of a grade

[33] *See* Gurin Report, *supra*, *Table C1*. Other studies at the higher education level are in accord with Gurin's findings. *See* Patricia Marin, *The Education Possibilities of MultiRacial/MultiEthnic College Classrooms, in* DOES DIVERSITY MAKE A DIFFERENCE? THREE RESEARCH STUDIES ON DIVERSITY IN COLLEGE CLASSROOMS 74 (American Association of University Professors 2000) (reporting, based on study of multiracial classroom interactions at University of Maryland, the assessment by students and faculty alike that classroom racial diversity has "a positive effect on student cognitive and personal development" by "challeng[ing] students' stereotypes, broaden[ing] their perspectives, and stimulat[ing] critical thinking"); Mitchell J. Chang, *Is it More Than About Getting Along? The Broader Educational Relevance of Reducing Students' Racial Biases*, 42 J. College Student Dev. 93, 101 (Mar./Apr. 2001) (reporting that students "with higher levels of racial biases against African Americans also reported that they were less likely to (a) change their opinion as a result of the knowledge or arguments presented by others, (b) develop their own values and ethical standards, [or] (c) learn to adapt to change" and that less prejudiced students were more likely to demonstrate all three cognitive skills).

year at the kindergarten level.[34] More recent studies also have demonstrated positive links between black student test achievement and school racial diversity.[35]

There is also a small but robust group of studies linking black student enrollment in predominantly white schools to significant gains in those students' long-term educational achievement. Black students enrolled in predominantly white high schools are more likely than black students enrolled in predominantly black schools to graduate from high school, more likely than those students to pursue higher education, and more likely when they do so to pursue higher-paying

[34] *See* Rita E. Mahard & Robert L. Crain, *Research on Minority Achievement in Desegregated Schools, in* THE CONSEQUENCES OF SCHOOL DESEGREGATION 103, 111, 113 (Christine H. Rossell & Willis D. Hawley eds., 1983) (reassessing results of 93 separate studies). Mahard and Crain also found that black student achievement fell off significantly in southern schools in which the student bodies were less than 19% minority, *id.* at 120, and fell off in Northern schools in which the student bodies were less than 9% minority, *id.*, providing yet further evidence of the educational benefit of enrolling a "critical mass" of minority students.

[35] *See* Carl Bankston III & Stephen J. Caldas, *Majority African American Schools and Social Injustice: The Influence of De Facto Segregation on Academic Achievement*, 75 Soc. Forces 535, 547-50 (Dec. 1996) (reporting that students who attended predominantly black schools performed less well than those who attended predominantly white schools on Louisiana graduation test and that this result held even after controlling for the socioeconomic status of the students' parents); Bernadette Gray-Little & Robert A. Carels, *The Effect of Racial Dissonance on Academic Self-Esteem and Achievement in Elementary, Junior High, and High School Students*, 7 J. Res. on Adolescence 109, 123, 125-26 (1997) (finding that black and white 11th graders had the highest achievement levels at racially balanced schools and that school racial composition exerted a more powerful influence on black student performance than it did on white student performance).

professions that traditionally have been dominated by whites.[36]

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The sum of the matter is this: if we are to "hasten the day when 'we are just one race,'" *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 275 (1995) (Ginsberg, J., dissenting), we must ensure that our children are educated in a racially diverse setting—using, if necessary, race-conscious measures as a means to that end.

Because racially diverse classrooms produce significant societal and educational benefits, educational institutions—

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[36] *See Wells & Crain, supra*, at 535 (summarizing results of 21 studies and concluding that school desegregation increases black students' occupational aspirations, *id.* at 540, likelihood of going to college (at least for students in the north), *id.* at 542, likelihood of majoring in nontraditional fields such as computer and information sciences, *id.* at 542-43, and likelihood of entering white collar and professional jobs upon graduation, *id.* at 552); Robert Crain & Jack Strauss, *School Desegregation and Black Occupational Attainments: Results from a Long-Term Experiment*, 24-30 (N.I.E. July 1985) (reporting that black students educated in racially diverse environment were more likely to pursue nontraditional careers); Braddock & McPartland, *supra*, at 271 (concluding that "[e]arlier desegregated schooling has a sizable direct effect on black attendance at desegregated two-year and four-year colleges in the South and on Black attendance at desegregated two-year colleges in the North"); Robert L. Crain & Rita E. Mahard, *School Racial Composition and Black College Attendance and Achievement Test Performance*, 51 Soc. Educ. 81, 98-99 (1978) (reporting, based on national study conducted for the Rand Corporation, that black students who graduated from predominantly white high schools in the North in 1972 were 7% more likely to go to college and more than twice as likely to stay in college than black students who did not; but also concluding that black students who graduated from predominantly white high schools in the South were less likely to attend college and less likely to stay in college than black students who did not and speculating that this was due to the extreme hostility such students encountered in newly desegregated Southern schools).

whether elementary/secondary or higher education—should be allowed to give some consideration to race in order to achieve such diversity. This is not an "illegitimate use[] of race," *Croson*, 488 U.S. at 493, but rather is fully justified under the standard of strict scrutiny by society's compelling interest in the education of all of its children.

CONCLUSION

The judgments of the court of appeals in No. 02-241 and the district court in No. 02-516, upholding respondents' limited consideration of race in making admissions decisions, should be affirmed.

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